

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

JONATHAN HOLLANDER,
Plaintiff,
v.

No. 3:11-cv-01200-HU

**OPINION AND
ORDER**

RAINIER SCHOOL DISTRICT,
Defendant.

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Portland, OR 97206
Telephone: (503) 308-7056

Plaintiff Pro Se

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Attorneys for Defendant
Rainier School District

1 HUBEL, Magistrate Judge:

2 This matter comes before the Court on (1) Plaintiff Jonathan
3 Hollander's motion, pursuant to Federal Rule of Civil Procedure
4 ("Rule") 30(d)(3), to limit or terminate his deposition; (2)
5 Defendant Rainier School District's ("Defendant") motion, pursuant
6 to Rule 6(b)(1), to enlarge the time in which to respond to
7 Plaintiff's pending motion for summary judgment; and (3)
8 Defendant's motion, pursuant to Rules 37(b), 37(d) and 41(b), to
9 dismiss Plaintiff's second amended complaint for failure to
10 prosecute, failure to comply with a court order, and failure to
11 attend a deposition. The parties have given full consent to
12 adjudication of the case by a magistrate judge pursuant to 28
13 U.S.C. § 636(c). For the reasons that follow, Plaintiff's motion
14 (Docket No. 69) to limit or terminate his deposition is denied,
15 Defendant's motion (Docket No. 71) to enlarge the time in which to
16 respond to Plaintiff's motion for summary judgment is granted, and
17 Defendant's motion (Docket No. 75) to dismiss Plaintiff's second
18 amended complaint is stayed.

19 **I. FACTS AND PROCEDURAL HISTORY**

20 Plaintiff brought this action against Defendant, alleging
21 violations of 42 U.S.C. § 1983, the Fourteenth Amendment and § 504
22 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as well as
23 state law claims for defamation and intentional and negligent
24 infliction of emotional distress. In an Opinion and Order dated
25 March 22, 2013, the Court granted Defendant's motion to dismiss
26 Plaintiff's state law claims and Rehabilitation Act claim(s), with
27 leave to replead. On April 22, 2013, Plaintiff filed a second
28 amended complaint, alleging violations of § 1983, the Fourteenth

1 Amendment, and § 504 of the Rehabilitation Act. Presumably,
2 Plaintiff's state law claims were excluded because he could not
3 allege, in good faith, timely tort claim notice.

4 On June 11, 2013, the Court sent Plaintiff a summary judgment
5 advice notice. The following month, on July 15, 2013, Plaintiff
6 filed a motion for summary judgment pursuant to Rule 56(c). On
7 July 27, 2013, Defendant filed a motion for an extension of time in
8 which to respond to Plaintiff's motion for summary judgment due to
9 out-of-state travel plans. Three days later, on July 30, 2013,
10 Defendant sent a letter notifying the Court and Plaintiff of
11 "discovery issues" it planned on discussing at the hearing on its
12 motion for an extension of time. Those issues included the
13 adequacy of Plaintiff's responses to Defendant's interrogatories
14 and requests for production, as well as Plaintiff's refusal to sit
15 for a deposition.

16 On August 2, 2013, a hearing was held to discuss, among other
17 things, the aforementioned discovery issues and Defendant's motion
18 for an extension of time. As relevant to the instant motions, the
19 Court ordered Plaintiff to: (1) sit for deposition at the law
20 offices of Hart Wagner LLP in Portland, Oregon, at 8:30 a.m., on
21 August 7, 2013; (2) produce all records substantiating any other
22 expenses, economic or special damages, for which Plaintiff contends
23 Defendant is liable for the period of January 1, 2010, through the
24 present (e.g., the period for which Plaintiff claims damages); and
25 (3) all records relating to any counseling or psychological therapy
26 of any type sought by Plaintiff for the period of January 1, 2008,
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1 through the present. (Def.'s First Req. Produc. Docs. at 3; Hr'g
2 Tr. 16:12-18:19, 54:8-55:22, Aug. 2, 2013.)

3 The Court also set a deadline of August 30, 2013 for Defendant
4 to respond to Plaintiff's motion for summary judgment. The Court's
5 somewhat expedited response deadline was based on Defendant's
6 counsel's representation that he did not need Plaintiff's medical
7 records, or testimony from Plaintiff regarding those records, in
8 order to respond to the pending motion for summary judgment. (Hr'g
9 105:14-18) ("THE COURT: Mr. Kraemer, my intent will be, since you
10 don't need the medical records portion of the deposition to respond
11 to the summary judgment and you'll take the deposition on the 7th,
12 I would be looking at something like the 23rd or 30th of August for
13 your response to the summary judgment motion. Can you make that?
14 MR. KRAEMER: Yes, Your Honor. THE COURT: Which date do you want?
15 MR. KRAEMER: 30th, please.")

16 As stated on the record, Plaintiff's medical records were to
17 be produced subject to a protective order prepared by Defendant's
18 counsel "in the form or format of the sample protective orders in
19 [the District of Oregon's] local rules."¹ (Hr'g Tr. 21:13-15.)
20 Plaintiff indicated that his preference was to gather the records
21 on his own and be reimbursed by Defendant, as opposed to providing
22 Defendant's counsel with a release in order to obtain the records
23 from his medical providers. Plaintiff also stated that he would
24 provide Defendant with his medical records prior to his deposition:

25
26 ¹ The Court did not explicitly require Defendant to have the
27 protective order in place prior to Plaintiff producing his medical
28 records.

1 MR. HOLLANDER: Your Honor, I have the records for them.
2 There's just several thousand pages.

3 THE COURT: You have them already?

4 MR. HOLLANDER: Yes, sir. I was looking online when we
5 were talking. My apologies. It's modern technology. The
6 hospital does everything online. They don't fill out a
7 paper prescription anymore. So according to [Oregon]
8 Health Science University, they have my entire health
9 record back [to] 1997 -- all -- the many thousand of
10 pages of it. I just see a lot of zeros.

11 THE COURT: Okay. So all of those records are in one
12 place, then, and you still have the issue about there was
13 a medical provider in Australia . . . as well, so that --

14 MR. HOLLANDER: Which would apply to medication. As far
15 as mental health records, everything is available in the
16 state of Oregon, Your Honor.

17 THE COURT: Well, you need to get those records to them
18 before -- before the deposition, and that doesn't mean
19 give them 10,000 pages of medical records at 8:30 a.m.
20 Wednesday [August 7th] and expect they're going to depose
21 you about them then. It means get the records -- if
22 they're as available as you say, find a way to get them
23 to Mr. Kraemer's office today.

24 MR. HOLLANDER: It can't be today, but it will be very,
25 very soon, Your Honor.

26 THE COURT: Alright. Well, show up at 8:30 and you'll be
27 done at 2:15. If there's problems, get a hold of me and
28 we'll talk about where we go from there. Mr. Kraemer,
I'm not foreclosing a follow-up session, because I don't
know when you're going to get these records and what the
adequacy of the time to review them is before the
deposition. I would hope that you won't need to
reconvene the deposition given the difficulty getting it,
but, if you do, you know where I am to ask for permission
to do that.

23 (Hr'g Tr. 103:19-105:9.)

24 On August 7, 2013, Plaintiff appeared for his deposition at
25 the law offices of Hart Wagner without ever providing Defendant's
26 counsel with his medical records. It quickly became apparent that
27 Plaintiff had little interest in cooperating with Defendant's
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1 counsel. For example, Defendant's counsel began by asking
2 Plaintiff about his employment history and the following back-and-
3 forth ensued:

4 Q. Are you employed?

5 A. No.

6 Q. When was the last time you had a job?

7 A. 2006.

8 Q. What did you do then?

9 A. I was in the military.

10 Q. What branch?

11 A. Navy.

12 Q. What did you do?

13 A. This has been discussed. Can we move on, please?

14 Q. What did you do?

15 A. This has been discussed. Can we move on, please?

16 Q. I'm asking you --

17 A. I object -- I object to this line of questioning
18 because the judge last week already discussed this
and said move on.

19 Q. So you're not going to tell me what you did in the
20 Navy?

21 A. It's all been on paper several times, and it has
absolutely nothing to do with this case.

22 Q. So are you going to tell me what you did in the
23 Navy in response to my questions?

24 A. You know what I did in the Navy? I was a United
States sailor. That is my official job.

25 Q. A United States sailor?

26 A. It's what it sounds like when you're in the Navy.

27 Q. What was your specialty?

1 A. My specialty varied.

2 Q. Okay. Why don't you give me three of the variances.

3 A. Judge's assistant, legal secretary, judge's driver.
4 How's that?

5 Q. So you worked in the legal area?

6 A. Part time.

7 Q. Okay. What did you do the other part?

8 A. The other time, I was in the military and I would
9 be deployed to classified areas that I am not going
10 to discuss because I had to swear that I would not
11 discuss any deployments.

12 Q. And what was your job?

13 A. I object. Let's move on. The judge, last week,
14 said this had no bearing on this. You've already
15 asked more than a dozen questions, some of them
16 repeatedly.

17 Q. What was your job?

18 A. We're done.

19 Q. What was your job?

20 A. If you ask this one more time, this deposition is
21 over.

22 Q. Are you serious?

23 A. I am serious. You've asked this more than 12
24 times.

25 Q. You haven't answered my question yet. I'm entitled
26 to know what your job was.

27 (Hollander Dep. 6:16-8:23, Aug. 7, 2013.)

28 Plaintiff was similarly combative when Defendant asked about
his educational background:

Q. Did you go to high school [in Santa Fe]?

A. No.

1 Q. Where did you go to high school?

2 A. I will answer this question. And from then on, any
3 questions regarding education, I'm going to say the
4 same thing Judge Hubel told you last Friday. Which
is, irrelevant. Move on, please.

5 Q. He said -- he said you didn't have to [answer] the
6 interrogatory. That does not mean you do not have
to answer questions in the deposition.

7 A. Correct. I understand answering the questions in
8 the deposition. But there does get to a point
where it has nothing to do with the case at hand.

9 Q. Where did you go to high school?

10 A. Davis, California. That is the end of my education
11 questions. Everything else is listed or has been
discussed before. Can we please move on to a new
12 issue?

13 Q. Actually, it hasn't. Where did you go to college,
or did you?

14 A. Can we please move on?

15 Q. Where did you go to college, or did you?

16 A. I object to this line of questioning. This has
17 already been discussed several times. It's already
been written. The judge has already said move on.

18 Q. Where did you go to college, if you did? Did you
19 go to college?

20 A. I object to this line of questioning.

21 Q. I understand.

22 A. The judge has already said move on. If you ask
23 this one more time, counselor, this deposition is
over.

24 Q. You're refusing to answer whether or not you went
to college?

25 A. I am not refusing. I am giving you the same answer
26 that the judge gave you last week. And I have
27 already responded to several questions regarding
nothing that ha[s] to do with this case.
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1 (Hollander Dep. 10:22-12:10.)

2 THE REPORTER: Excuse me. I'm going to have to ask you
3 both to speak one at a time.

4 Q. Can you wait until I finish talking?

5 A. My apologies.

6 Q. -- before you interrupt my -- you can object.
7 That's fine. Quite frankly, I'm not sure you
8 really need to, given the fact you don't have a
9 lawyer. I suspect if I tried to use any of this
10 improperly, Judge Hubel would not let me anyway.
11 But if you feel the need to object, you have that
12 right. That does not give you the right to not
13 answer the question, however, okay?

14

15 A. You know, thinking that I don't have to answer or
16 don't have to do something because I don't have an
17 attorney is wrong way of thinking, considering I've
18 kicked your ass for two years without an attorney.

19 (Hollander Dep. 12:24-14:9.)

20 Lastly, Defendant's counsel attempted to ask Plaintiff
21 questions regarding the contents of the General Judgment of
22 Dissolution of Marriage entered by the Columbia County Circuit on
23 September 28, 2011, which states: "Wife shall have sole legal
24 custody of [the Hollander children] subject to the following terms
25 and conditions . . . Husband shall [have] no parenting time with
26 the children until further order of the court, Husband having
27 failed to follow the court's previous orders regarding his
28 parenting time herein. Any resumption of parenting time shall only
happen after Husband has undergone a psychological evaluation
approved by the court." (Edenhofer Decl. Ex. 3 at 4.) Plaintiff
refused to answer questions about the judgment and walked out of

1 his deposition after thirty-eight minutes (e.g., at 9:08 a.m. on
2 August 7, 2013).

3 On August 13, 2013, Plaintiff filed a motion to terminate or
4 limit his deposition in light of the "bad faith behavior" of
5 Defendant's counsel. Eight days later, on August 21, 2013,
6 Defendant's counsel sent Plaintiff a letter concerning his medical
7 records. Enclosed with that letter were eight blank medical
8 release forms and a draft stipulated protective order for
9 Plaintiff's review and signature. Plaintiff responded by email on
10 August 23, 2013, stating:

11 You're kidding yourself if you think I would sign such a
12 BS document! According to you, nothing is confidential,
13 as you've listed every person, every employee, agent,
14 representative or anyone else related in any way at all
15 to anything anywhere as being 'okay' to view these
16 documents.

17 The court ordered that I produce these documents when you
18 provide the appropriate protective order. This is not
19 even close. If you'd like to call the Judge, please feel
20 free to. I'm sure he'll agree that its [sic] not much of
21 a protective order, when you let everyone and their
22 mother have access.

23 I offered to sign a release weeks ago, not only did you
24 NOT produce any paperwork, but you went ahead and
25 requested confidential medical information anyway, so
26 please . . . call the Judge, I'm sure he will (as usual)
27 not be happy with you.

28 (Edenhofer Decl. Ex. 5 at 1.)

On August 27, 2013, Defendant's counsel sent Plaintiff an
email in attempt to set up a telephone conferral regarding "a
couple of issues . . . concerning the case." (Edenhofer Decl. Ex.
6 at 1.) After not receiving a response from Plaintiff, Defendant
sent another email on August 28, 2013, indicating, among other
things, that Defendant planned on filing a motion to extend the

1 deadline for responding to Plaintiff's motion for summary judgment,
2 as well as a motion to dismiss for failure to prosecute and failure
3 comply with the Court's orders. The next day, Defendant filed its
4 motion for an extension of time. Plaintiff never filed a
5 substantive response.

6 On August 31, 2013, Plaintiff sent an email to Defendant's
7 counsel, stating:

8 You've had two months to explain why you did not have a
9 valid court order, (plaintiff's MSJ); you've already
10 added six months to this case, and you really think that
11 the court is going to give you another?

12 The Judge warned you in January not to waste time, and
13 waste time is all you apparently know how to do.

14 You get upset if I will not return a phone call in 48
15 hours, but it takes you three months to explain why your
16 client lacks a valid court order. You can take 2
17 vacations in 4 months, but I can't be gone for 4 days
18 (and they were days you specifically asked several
19 questions about during the deposition, so you . . .
20 obviously knew I was not going to be around).

21 Unless you actually want to take this case seriously, do
22 not contact me ever again. Everything so far has been a
23 joke, and you the court jester.

24 If I'm wrong, then you would actually try to do something
25 OTHER than ask for more time. Its [sic] the only thing
26 you know how to do. Vacation [and] ask for more time.

27 Go be the fool in someone else's case, cause you're [sic]
28 client is GUILTY, and you know it. Do not call me ever
again, unless it is to admit the FACT that you are
guilty.

23 (Edenhofer Decl. Ex. 8 at 1.) On September 2, 2013, Defendant's
24 counsel sent another email to Plaintiff requesting that they confer
25 by telephone prior to the anticipated filing of Defendant's motion
26 to dismiss. Three days later, on September 5, 2013, Defendant
27 filed its motion to dismiss for failure to prosecute, failure to
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1 comply with the Court's orders, and failure to attend a deposition.
2 Again, Plaintiff never filed a substantive response.

3 On September 11, 2013, it was brought to the Court's attention
4 that there was dispute between the parties as to the terms of the
5 proposed protective order. A telephone hearing was originally set
6 for September 17, 2013, but on the morning of the hearing,
7 Plaintiff notified the Court that he needed to seek urgent
8 treatment for his medical condition and would be unable to attend.
9 Although the Court reset the hearing October 7, 2013, once again,
10 Plaintiff contacted the Court on that morning of the hearing and
11 indicated that he would be unable to attend. All attempts by the
12 Court to communicate with Plaintiff regarding a new hearing date
13 were unsuccessful.

14 As a result, on October 22, 2013, the Court entered an order
15 that: (1) informed the parties the Court would address the dispute
16 regarding the terms of the protective order at the October 30, 2013
17 hearing on Plaintiff's motion to terminate or limit his deposition,
18 Defendant's motion for an extension of time, and Defendant's motion
19 to dismiss; (2) required Plaintiff to confirm, by October 25, 2013,
20 at 4:00 p.m., that he was medically able to attend that hearing and
21 address the reasonably prompt prosecution of his claims from this
22 point forward; and (3) warned Plaintiff that, if he failed to
23 attend the October 30, 2013 hearing, he should be prepared for the
24 Court to schedule a hearing to show cause why this case should not
25 be dismissed for lack of prosecution.

26 On October 24, 2013, Plaintiff sent the Court's courtroom
27 deputy an email, stating, among other things: "I will send notice
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1 to the court, in writing, that I will be able to attend the hearing
2 scheduled for October 30 at 10:00 a.m." Plaintiff never sent a
3 formal written notice. Then, on October 29, 2013, at 9:57 p.m.,
4 Plaintiff sent another email to the courtroom deputy, stating,
5 among other things: "Dear Jude [sic] Hubel, I will not be able to
6 appear in person tomorrow for the October 30, 2013 hearing, as I am
7 still very sick with an upper respiratory infection. . . . My only
8 option for this hearing is to appear via telephone."

9 On October 30, 2013, prior to the 10:00 a.m. hearing, the
10 Court informed the parties that it would conduct the hearing by
11 telephone rather than in person to accommodate Plaintiff. The
12 courtroom deputy initiated the call and was able to contact
13 Defendant's counsel and place him on hold. Over the course of the
14 next ten minutes, the courtroom deputy made several unsuccessful
15 attempts to contact Plaintiff via the telephone number listed for
16 Plaintiff on the District of Oregon's electronic filing system, a
17 telephone number provided by Defendant's counsel, and email. When
18 the courtroom deputy called Plaintiff's telephone number listed
19 with CM/ECF, it rang but then immediately disconnected. An email
20 was sent at 10:02 a.m. to Plaintiff, (see attached Ex. 1), advising
21 him of this and asking him for a reply and another phone number. No
22 reply ever came on October 30, nor has one as of the entry of this
23 order.

24 Several more calls produced the same result. At 10:10 a.m.,
25 the Court obtained another phone number for Plaintiff from
26 Defendant's counsel. When the courtroom deputy called that phone
27 number, it went immediately to voice mail and a message indicated
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1 this voice mailbox had not been set up and could not take a
2 message. The Court detailed the history leading up to the hearing
3 on October 30 including Plaintiff's actions on the record, with a
4 stenographer present.

5 II. DISCUSSION

6 Prior to addressing the merits of the pending motions, the
7 Court must clarify a few factual matters that Plaintiff misstated
8 during his deposition as set out above. First, and contrary to
9 Plaintiff's assertion, the Court never told Defendant's counsel to
10 "move on" when it came to Plaintiff's educational background, nor
11 did the Court say that it was "irrelevant" to this case. Rather,
12 at the August 2, 2013 hearing, the Court stated: "I'm not going to
13 require [Plaintiff] to list [out his schools in response to
14 Interrogatory No. 3]. You can -- to the extent you think it's
15 important information, you can ask him in his deposition. And, you
16 know, to the extent you remember that, that information, and can
17 provide it in your deposition, you'll have to do that, Mr.
18 Hollander. I think it's a waste of their time, but if that's how
19 they want to use their time, that's their problem." (Hr'g Tr.
20 71:25-72:7.)

21 Second, during Plaintiff's deposition Defendant's counsel
22 asked when he would receive the medical records the Court ordered
23 be produced. Plaintiff responded by stating: "I will provide the
24 medical records, as the Court said, when you send me the paperwork
25 showing what the records are that you need, who's going to see it,
26 what they are. And it has to be signed and notarized by everybody
27 swearing to the fact that they're going to be receiving
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1 confidential medical information." (Hollander Dep. 33:19-25.) This
2 is completely inaccurate. As discussed above, Plaintiff
3 unequivocally stated during the August 2, 2013 hearing that his
4 medical records were immediately available electronically and he
5 would produce them prior to the date of his deposition. Plaintiff
6 also clearly stated he did not want to sign releases, but preferred
7 to gather the records himself to give to Defendant's lawyers.
8 Clearly Plaintiff has not, to date, complied with the Court's
9 orders or acted in accordance with his representations to the
10 Court.

11 With that said, the Court now turns to the merits of the
12 pending motions. Plaintiff moves, pursuant to Federal Rule of
13 Civil Procedure ("Rule") 30(d)(3), to limit or terminate his
14 deposition. Rule 30(d)(3) states: "At any time during a
15 deposition, the deponent or a party may move to terminate or limit
16 it on the ground that it is being conducted in bad faith or in a
17 manner that unreasonably annoys, embarrasses, or oppresses the
18 deponent or party." FED. R. CIV. P. 30(d)(3). Such a "motion may
19 be filed in the court where the action is pending or the deposition
20 is being taken." *Id.*

21 The Court has reviewed the transcript from Plaintiff's thirty-
22 eight minute deposition. The transcript contains absolutely no
23 basis for limiting or terminating Plaintiff's deposition. In fact,
24 in the Court's view, it was Plaintiff, not Defendant's counsel, who
25 acted out of line, misstated the Court's orders, and impeded the
26 prompt resolution of this case. Plaintiff's motion to terminate or
27 limit his deposition is therefore denied.

1 In light of the inadequate testimony provided by Plaintiff
2 during his deposition, it is evident that the Court must extend the
3 deadline for responding to Plaintiff's motion for summary judgment.
4 Indeed, at the August 2, 2013 hearing, the Court explained to
5 Plaintiff that his deposition had to occur prior to Defendant's
6 response deadline: "Well, you have a pending motion for summary
7 judgment that you want them to respond to, and they're entitled to
8 your deposition before they respond to it, so I'm not going to
9 require their response until two weeks after your deposition is
10 taken at the earliest." (Hr'g Tr. 98:8-12.) Accordingly,
11 Defendant's motion for an extension of time is granted.

12 Defendant also moves, pursuant to Rules 37(b), 37(d) and
13 41(b), to dismiss Plaintiff's second amended complaint for failure
14 to prosecute, failure to comply with a court order, and failure to
15 attend a deposition.² Rule 37(b) provides that if a party "fails
16 to obey an order to provide or permit discovery, . . . the court
17 where the action is pending may issue further just orders [which]
18 may include . . . dismissing the action or proceeding in whole or
19 in part." FED. R. CIV. P. 37(b)(2)(A). Similarly, Rule 37(d)
20 states that a court may dismiss an action or proceeding in whole or
21 in part if "a party . . . fails, after being served with proper
22 notice, to appear for that person's deposition." FED. R. CIV. P.
23 37(d)(1)(A).

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26 ² Rule 41(b) provides: "If the plaintiff fails to prosecute or
27 to comply with these rules or a court order, a defendant may move
28 to dismiss the action or any claim against it." FED. R. CIV. P.
41(b).

1 "A district court should consider five factors before imposing
2 the sanction of dismissal: (1) the public's interest in expeditious
3 resolution of litigation; (2) the court's need to manage its
4 docket; (3) the risk of prejudice to the defendants; (4) the public
5 policy favoring disposition of cases on their merits; and (5) the
6 availability of less drastic sanctions." *Rio Properties, Inc. v.*
7 *Rio Int'l Interlink*, 284 F.3d 1007, 1022 (9th Cir. 2002). "[T]he
8 key factors are prejudice and availability of lesser sanctions."
9 *Wanderer v. Johnston*, 910 F.2d 652, 656 (9th Cir. 1990). "[T]he
10 district court must also determine that the violations of discovery
11 orders were due to the willfulness, bad faith, or fault of the
12 party." *Hyde & Drath v. Baker*, 24 F.3d 1162, 1167 (9th Cir. 1994).

13 In considering the availability of lesser sanctions, one of
14 the two "key factors," "a district court must: (1) discuss the
15 feasibility of less drastic sanctions and explain why alternative
16 sanctions would be inappropriate; (2) if possible, implement
17 alternative sanctions before ordering dismissal; and (3) warn the
18 party of the possibility of dismissal before actually ordering it."
19 *Stephens v. Nike, Inc.*, No. 3:11-cv-00736-HU, 2012 WL 1801832, at
20 *1 (D. Or. May 17, 2012) (citing *Hyde*, 24 F.3d at 1167)). To date,
21 the Court has not implemented lesser sanctions or warned Plaintiff
22 of the possibility of dismissal. The most appropriate course of
23 action, then, is to stay the Court's ruling on Defendant's motion
24 to dismiss and provide Plaintiff with a warning.

25 Let there be no mistake on Plaintiff's part, this opinion is
26 a warning that this case will be dismissed if he fails to: (1)
27 conduct himself in a civil and courteous manner in his dealings
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1 with Defendant's counsel; (2) comply with the Court's orders; (3)
2 act in accordance with representations he makes and has made to the
3 Court; or (4) cooperate with Defendant's counsel in the course of
4 discovery, including the taking of his deposition and answering
5 Defendant's counsel's questions. In the event a further sanction
6 is ultimately deemed appropriate, the Court will either dismiss
7 this action with prejudice, dismiss this action without prejudice,
8 or stay the proceeding pending resolution of Plaintiff's health
9 problems.

10 Plaintiff will be required to sit for a deposition that will
11 take place in the mediation room on the ninth floor of the Hatfield
12 Courthouse, located at 1000 Southwest Third Avenue in Portland,
13 Oregon. By November 12, 2013, at 12:00 p.m., Plaintiff will need
14 to confirm, in writing, to the Court and Defendant's lawyers
15 whether he plans on appearing in person for his deposition. A
16 telephone scheduling conference will be held on November 13, 2013,
17 at 1:30 p.m., to set the date of Plaintiff's deposition, as well as
18 a date for oral argument on Plaintiff's motion for summary
19 judgment. Defendant's brief in response to Plaintiff's motion for
20 summary judgment will be due three weeks after the date of
21 Plaintiff's deposition, and Plaintiff's reply brief will be due two
22 weeks after Defendant's response.

23 Also by November 12, 2013, at 12:00 p.m., Plaintiff must
24 produce (1) all records substantiating any other expenses, economic
25 or special damages, for which Plaintiff contends Defendant is
26 liable for the period of January 1, 2010, through the present
27 (e.g., the period for which Plaintiff claims damages); and (2) all
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1 records relating to any counseling or psychological therapy of any
2 type sought by Plaintiff for the period of January 1, 2008, through
3 the present. (Def.'s First Req. Produc. Docs. at 3; Hr'g Tr.
4 16:12-18:19, 54:8-55:22, Aug. 2, 2013.)³ The medical records
5 produced by Plaintiff will be for Defendant's counsels' (Mr.
6 Kraemer and Ms. Edenhofer) eyes only until further order of the
7 Court. A separately filed protective order, put in place by the
8 Court, will include the same restriction.

9 Additionally, the Court wishes to make a few very brief
10 comments about Plaintiff's thirty-eight minute deposition. The
11 Court does not have the benefit of Plaintiff's inflection, manner
12 and tone in judging his deposition testimony. But overall it seems
13 apparent that Plaintiff was quite hostile and disrespectful towards
14 Defendant's counsel. That type of conduct is unnecessary and,
15 going forward, it will not be tolerated by this Court.

16 Last, Plaintiff has failed to appear for three hearings and
17 been more than a little obstructive in his approach to this case
18 over the last several months. The Court warned Plaintiff that, if
19 he failed to attend the October 30 hearing, he should expect a show
20 cause order requiring him to demonstrate why this case should not
21 be dismissed. The Court has clearly set forth what Plaintiff must
22 do to proceed with his case in this order. If he fails to do any
23 part of what is ordered here without obtaining permission in
24 writing from the Court at least twenty-four hours in advance, a

25
26 ³ During the August 2, 2013 hearing, Plaintiff represented to
27 the Court that these records were easily accessible via the Oregon
28 Health Sciences University's website and would be provided to
Defendant's "very, very soon." (Hr'g Tr. 104:23-24.)

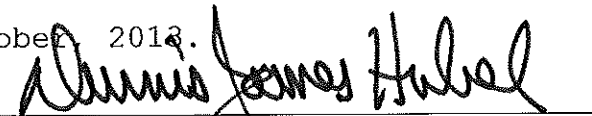
1 hearing will be promptly scheduled on Defendant's motion to dismiss
2 (Docket No. 75) and Plaintiff will be required to file his
3 arguments against dismissal in writing seven business days before
4 that hearing and attend that hearing. If Plaintiff's explanation
5 for failing to follow this court order is not satisfactory, his
6 case will be dismissed either with or without prejudice, whichever
7 the facts support at that time.

8 **III. CONCLUSION**

9 For the reasons stated, Plaintiff's motion (Docket No. 69) to
10 limit or terminate his deposition is denied, Defendant's motion
11 (Docket No. 71) to enlarge the time in which to respond to
12 Plaintiff's motion for summary judgment is granted, and Defendant's
13 motion (Docket No. 75) to dismiss Plaintiff's second amended
14 complaint is stayed.

15 IT IS SO ORDERED.

16 Dated this 31st day of October, 2013.

17 
18 DENNIS J. HUBEL
United States Magistrate Judge
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Re: CV 11-1200-HU Hollander v. Rainier School District 
Kathleen Bartholomew to: J H

10/30/2013 10:02 AM

Mr. Hollander - when I call your phone number it automatically disconnects - (503) 308-7056. Is there an alternate number? Please reply asap. thanks.

J H

Dear Jude Hubel, I will not be able to appear in...

10/29/2013 09:57:07 PM

From: J H <jehollander@gmail.com>
To: "Kathleen Bartholomew@ord.uscourts.gov" <kathleen_bartholomew@ord.uscourts.gov>, Leslie Edenhofer <LAE@hartwagner.com>,
Date: 10/29/2013 09:57 PM
Subject: Re: CV 11-1200-HU Hollander v. Rainier School District

Dear Jude Hubel,

I will not be able to appear in person tomorrow for the October 30, 2013 hearing, as I am still very sick with an upper respiratory infection. As much as I wish I was not, I am on 100% permanent disability due to Cancer, and right now, there are enough people walking around with colds, that every time I leave the house I end up with a fever later on that night. Its reached the point where I've stopped leaving my house, with the hopes that solitude would aid in my recovery.

My only option for this hearing, is to appear via telephone. My sincerest apologies to the court, and all other parties for any inconvenience this causes, but spend 20 seconds next to me while I'm coughing, and you will not want to be in the same room with me for 60 minutes.

Again, my apologies to everyone for any inconvenience this causes. I am an open & friendly person when it comes to sharing, but pneumonia is something I think I'll keep to myself.

Respectfully,

Jonathan Hollander, plaintiff

On Tue, Oct 22, 2013 at 10:39 AM, <kathleen_bartholomew@ord.uscourts.gov> wrote:
Mr. Hollander:

Attached please find a very time sensitive opinion and order just entered in this case. I am also sending a copy of the order to you via fed ex, which you should have by the end of the day tomorrow. Please acknowledge your receipt of this e-mail via reply.

Thank you.

Exhibit 1